The panel also ordered that a number of materials filed during the hearing be sealed to protect confidential client information.

THOMAS PAUL HARDING

Surrey, BC
Called to the bar: August 31, 1990
Discipline hearings: December 11-12, 2012 and April 29, 2013 (facts and determination) and December 19, 2013 (disciplinary action)
Panel: Bruce LeRose, QC, Chair, William Everett, QC and June Preston, MSW
Decisions issued: August 30, 2013 (2013 LSBC 25) and February 17, 2014 (2014 LSBC 06)
Counsel: Kieron Grady for the Law Society; Gerald Cuttler for Thomas Paul Harding

FACTS

In November 2009, Thomas Paul Harding was retained by a client in a family law action. Harding requested a copy of the client's file from the client's previous lawyer. In response, he received a letter, enclosing accounts totalling $3,072.56 and advising that the file would be provided once the client paid the accounts.

There was an exchange of correspondence between Harding and the other lawyer on the appropriateness of the accounts. On February 17, 2010, the other lawyer wrote to Harding and enclosed the client's file on the undertaking that the outstanding accounts would be paid out, as solicitor of first charge, upon receipt of any future settlement paid to the client in this matter. Further, if Harding was unwilling or unable to accept the undertaking, he would return the file uncopied.

On March 15, 2010, Harding contacted a Law Society practice advisor about the undertaking imposed by the other lawyer. Harding was advised that all undertakings must be complied with, regardless of merit.

That same day, Harding wrote a letter to his client's former lawyer and three other lawyers at the law firm. The letter included rude and discourteous remarks, such as "any stupid, dishonest lawyer can purport to impose a stupid undertaking, and the receiving lawyer is stuck with it."

The other lawyer objected to the tone of Harding's letter on the basis that it was damaging to his reputation and brought the practice of law into disrepute. He demanded an immediate retraction and apology. Harding followed up with a second letter that continued to demean the lawyer and to belittle his English skills. Its context and tone were not consistent with that of an apology.

In a second family law matter, Harding wrote an email, dated September 9, 2010, to counsel for the opposing party that contained rude and discourteous remarks directed to opposing counsel. The impugned remarks implied that opposing counsel was not meeting his ethical duty to the children and appeared to tie that alleged failure to his grooming habits.

Harding's remarks were made because of his concern for the best interests of the children and where they would be located during his client's access to them. His letter achieved its purpose and advanced his client's case, as opposing counsel provided a substantive response by letter the next morning.

DETERMINATION

The panel found that Harding's conduct in writing two letters to his client's former lawyer that contained rude and discourteous remarks constituted professional misconduct.

The *BC Code* and recent decisions of the Supreme Court of Canada make it clear that incivility in a lawyer's conduct toward another lawyer impedes the proper functioning of the administration of justice and undermines public confidence.

Harding did not acknowledge his misconduct, nor did he retract his remarks or apologize to the complainant.

The panel was particularly concerned that Harding's professional conduct record includes a prior citation and two conduct reviews that involve an uncivil manner in his dealings with other counsel. Therefore, the two letters could not be viewed as an isolated incident.

Notwithstanding that Harding recently began undergoing psychological counselling and treatment, he had opportunities to change his behaviour in the past and chose not to. However, the panel did see Harding's current attempt to change his behaviour as a positive step and considered this as a mitigating factor.

In the second matter, Harding acknowledged that his remarks in the email to opposing counsel were sharp and sarcastic. The panel was of the view that the remarks constituted discordant communication to a degree that did not go beyond mere rudeness and discourtesy. The panel found the impugned remarks were not a marked departure from the conduct expected of lawyers and did not constitute professional misconduct.

DISCIPLINARY ACTION

The panel ordered that Harding:

1. pay a $2,500 fine; and
2. continue counselling and treatment with a psychologist.

ROGER DWIGHT BATCHELOR

Victoria, BC
Called to the bar: September 21, 2005 (BC); October 4, 2002 (Ontario)
Discipline hearing: January 28, 2014
Panel: Lee Ongman, Chair, Dr. Gail Bellward and Carol Hickman, QC
Decision issued: March 4, 2014 (2014 LSBC 11)
Counsel: Patrick McGowan for the Law Society; Roger Dwight Batchelor on his own behalf

FACTS

Roger Dwight Batchelor represented the defendant in an estate action in the Supreme Court of BC. In January 2012, he provided an

affidavit to his client, to be commissioned before a notary in Hawaii, having already signed the exhibits to that affidavit. He did not possess the original affidavit, as required by Supreme Court rules, when he caused a copy to be filed electronically. Further, he did not compare the signature on the copy of the affidavit to the original prior to electronic filing, as he indicated on the electronic filing statement.

Batchelor did not respond to or address concerns raised by opposing counsel in a letter regarding the commissioning of the affidavit.

In August 2012, when Batchelor provided an affidavit to his client to be commissioned before a lawyer in Winnipeg, he did not provide copies of the exhibits with the affidavit, nor did he instruct her that the affidavit must be commissioned together with the exhibits to the affidavit.

When he received the sworn affidavit back from his client without exhibits, he attached and signed the exhibits to the affidavit in the absence of his client, who had previously sworn the affidavit before the Winnipeg lawyer. Again, Batchelor filed an affidavit electronically without complying with Supreme Court rules.

In August 2013, Batchelor made representations to the court to the effect that the exhibits to the affidavit of his client, filed in August 2012, were commissioned by the lawyer before whom his client swore the affidavit. These representations were false. Batchelor had signed the exhibits himself five days earlier in the absence of his client.

ADMISSION AND DISCIPLINARY ACTION

Batchelor admitted that his actions constituted professional misconduct. In the course of representing his client, he relied on two affidavits that he knew were improperly commissioned and that he knew were filed electronically without compliance with the court's electronic filing rules.

He further made a representation to the court that the exhibits to the affidavit of his client were commissioned by the lawyer before whom the client swore the affidavit, when he knew or ought to have known that this was false because he had signed the exhibit pages in the client's absence.

The panel noted that Batchelor is an experienced practitioner and has a significant disciplinary history in only eight years of practice in BC.

Batchelor's conduct was a marked departure from the standards that the Law Society expects of lawyers. Confidence in the court's ability to fairly and judiciously view and receive evidence is eroded when sworn affidavits are falsified.

In the panel's view, the seriousness of Batchelor's misconduct cannot be overstated. He prepared affidavits for his client to sign, he received the signed affidavits, and he knew the exhibits were not properly signed by the lawyer who commissioned the affidavit because he was the lawyer whose signature was on the exhibits. He represented to the court, upon questioning by the judge, that the exhibits were sworn in front of the lawyer who commissioned the affidavit. In addition, he proceeded to file the documents electronically for court use, and in the filing is an inherent undertaking to the court and court registry that the lawyer has complied with the rules in the documents being filed in the proper format.

Batchelor's behaviour in wilfully filing improperly sworn affidavits and representing to the court otherwise is one of the most serious transgressions that can be committed by a lawyer. It goes to the heart of the legal process before our courts.

The panel accepted Batchelor's admission of professional misconduct and ordered that he:

1. be suspended from the practice of law for one month; and
2. pay $2,000 in costs.

ALAN GORDON SHURSEN HULTMAN

Vancouver, BC
Called to the bar: June 13, 1986
Discipline hearing: December 12, 2013
Panel: Barry Zacharias, Chair, James E. Dorsey, QC and Patrick Kelly
Oral reasons: December 12, 2013
Decision issued: March 7, 2014 (2014 LSBC 13)
Counsel: Carolyn Gulabsingh for the Law Society; Gerald Cuttler for Alan Gordon Shursen Hultman

FACTS

Alan Gordon Shursen Hultman represented a long-time client on several matters, including two foreclosure actions against her property, as well as an action for money owed by the client to a creditor on a promissory note. A default judgment was obtained on the promissory note and registered against the client's property.

In November 2009, Hultman was served with the sale approval order for the client's property, which enumerated some charges and encumbrances that were to be discharged and also had a clause noting all charges subsequent to the certificate of pending litigation were cancelled. The balance of the proceeds were to be paid into court under the terms of the order.

On December 20, 2009, Hultman spoke with his client who was recovering from surgery. She stated she needed the balance of the sale proceeds to look after her immediate needs, including the move necessitated by the sale of the property. She said she intended to satisfy the promissory note judgment from funds from her mother's estate, which she expected shortly. She wanted the funds paid out of trust and told Hultman not to disclose the existence of the promissory note judgment.

Hultman told his client he could not apply for a payout of those funds without disclosing the judgment. He then spoke with a senior litigator and concluded he could not act on the application for the payout of the funds due to his client's instructions not to disclose the judgment. At his client's request, he then took steps to obtain another lawyer for her for the payout application.

On January 6, 2010, Hultman wrote the client asking if a portion of his account could be paid from her proceeds if the application was

successful. Subsequently, through Hultman, the client directed her other lawyer to pay his own account from those funds and send the balance to Hultman. Hultman was directed to pay $5,000 from the funds toward his outstanding account and forward the rest to the client.

ADMISSION AND DISCIPLINARY ACTION

Hultman admitted that he assisted his client to retain another lawyer in order to obtain a variation of the sale order, knowing the judgment was unsatisfied. He also admitted that he received the funds from the varied sale order, paid himself $5,000 on an account owed to him by his client, and paid her the balance, when he knew the judgment was unsatisfied.

It was clear to the panel that Hultman's actions in assisting his client in the way he did were contrary to and a marked departure from his obligations as a lawyer. Additionally, his actions in dealing with the sale proceeds when he knew of the unsatisfied judgment are a marked departure from those obligations. The panel found his conduct amounted to professional misconduct.

Hultman is experienced counsel and was not duped by his client, but knew exactly the nature of his actions. The creditor on a promissory note who was owed money by the client was victimized by losing the protection of her registered judgment and had to pursue further legal remedies. Hultman personally benefitted from his actions by having monies paid on his account.

The panel took into consideration that Hultman was cooperative and had no prior discipline record. Hultman's compassion for his client does not diminish his responsibility for his actions but, perhaps, makes them more understandable.

The panel ordered that Hultman:

1. was suspended from practice for a period of one month; and
2. pay $3,000 in costs.

DAVID DONALD HART

Langley, BC
Called to the bar: May 15, 1961
Discipline hearing: February 25, 2014
Oral reasons: February 25, 2014
Decision issued: April 9, 2014 (2014 LSBC 17)
Panel: Lynal Doerksen, Chair, Glenys Blackadder and John Hogg, QC
Counsel: Carolyn Gulabsingh for the Law Society; Dennis Quinlan, QC for David Donald Hart

FACTS

On September 9, 2009, David Donald Hart was retained by a client respecting issues arising from her separation from her husband. Hart filed documents on his client's behalf, seeking a divorce and corollary relief.

On November 18, the client's family residence was sold, and the net sale proceeds of $45,073.64 were placed in Hart's trust account.

On January 8, 2010, Hart and his client attended a judicial case conference with the husband and his lawyer. Between January and August 2010, there was an exchange of communication at various times between Hart's paralegal, secretary and legal assistant and either his client or the husband's lawyer.

In August, Hart's client expressed her disappointment in the lack of services and professionalism that had been demonstrated by several members of Hart's team. Until August 25, her repeated requests for the court order from the January judicial case conference were ignored. She planned to contest Hart's bill, because she was not much further ahead than a year before.

In December, the client informed Hart's legal assistant that she would respond to her husband's lawyer on her own behalf, as she could no longer afford legal bills. Hart's legal assistant advised her that the opposing lawyer would not be able to deal with her directly until Hart was removed as solicitor of record. Additionally, the client would need to satisfy Hart's final account before acting on her own.

On January 12, 2011, Hart received a letter advising that the lawyer representing the client's husband had been replaced. Hart did not provide a copy of this letter to his client or advise her that a new lawyer had been retained.

On January 19, Hart stopped working on the client's file until the outstanding account in the amount of $2,500 had been paid.

The client continued to have telephone conversations and exchange emails with Hart's staff regarding her case and her outstanding account. In April, the client requested a meeting with Hart and inquired if the trust funds were being held in an interest-bearing trust account.

Hart met with the client in May and assured her that he would give her a letter outlining her options and provide an update after reviewing his file materials. He did not follow through with this promise.

In August, the client emailed the lawyer representing her husband to express her dissatisfaction with Hart's services. This email prompted Hart to send a letter to the client confirming that he would write off her existing accounts receivable in the amount of $3,000.97 and provide a refund of an additional $500.

Hart also enclosed a Notice of Intention to Act in Person for her signature and advised that, once it was filed in the court registry, he would provide the refund cheque and her file materials. The client refused to sign it until her name and address were corrected on the document and the refund was increased to $1,000 to cover the interest lost from not having her funds in an interest-bearing account.

In March 2012, the client reluctantly signed the Notice of Intention to Act in Person form and filed it in the court registry on Hart's terms.

In May, the funds that Hart held in trust on the client's behalf were placed in an interest-bearing trust account and the client was advised that her file material and refund cheque were ready for pick up.

In July, the client and her husband entered into a separation agreement, resolving all outstanding issues.

ADMISSION AND DISCIPLINARY ACTION

Hart admitted that his conduct amounted to professional misconduct.

Failing to provide a sufficient level of service to one's client is a serious matter. Hart's misconduct impacted his client emotionally and financially.

From the time the client retained Hart until her matter was finally concluded (without the assistance of Hart), almost three years had passed. It appeared to the panel that this matter could have been concluded well within a year.

Hart further failed to put his client's funds in an interest-bearing account, failed to provide an opinion letter when he promised to do so, failed to correct an address on a Notice of Intention to Act in Person, failed to notify his client that her husband's lawyer had been replaced, and failed to inform his client that he would cease work until his account was paid.

Hart is an experienced family law litigator and has been practising law for almost 53 years. He has a lengthy history with the Law Society consisting of three prior citations, three conduct reviews and a referral to the Practice Standards Committee.

The panel considered the fact that Hart wrote off his client's account, reimbursed her $500, and compensated a partner in his firm for time spent on the file as mitigating circumstances.

The panel accepted Hart's admission and ordered that he pay:

1. a $7,500 fine; and
2. $1,000 in costs.

DOUGLAS WARREN WELDER

Kelowna, BC
Called to the bar: May 12, 1981
Discipline hearing: December 18, 2013
Panel: Lee Ongman, Chair, Jasmin Ahmad and Jory Faibish
Reports issued: August 30, 2013 (2013 LSBC 24) and April 30, 2014 (2014 LSBC 20)
Counsel: Geoffrey Gomery, QC for the Law Society; Douglas Warren Welder on his own behalf

FACTS

Between May and December 2011, Douglas Warren Welder was retained to represent a business owner and her company in defence of several claims against them including, but not limited to, bank foreclosure proceedings that had commenced in July 2011.

In February 2012, Welder's former clients renegotiated the terms of a loan with a lender, and the business owner granted a mortgage over her personal residence to the lender. Welder did not represent either of the former clients in respect of that mortgage.

In April 2012, Welder accepted a retainer from the lender to foreclose on the mortgage granted over his former client's personal residence and for judgment against each of the former clients. Welder did not seek consent from his former clients before agreeing to represent the lender in proceedings against them.

DETERMINATION

The panel concluded that, on the basis of the bank foreclosure alone, Welder's representation of the lender was not "substantially unrelated" to the representation of the former clients so as to relieve Welder from the overriding prohibition from acting in conflict with his former clients without consent.

As a result of his representation of the former clients, Welder came into possession of confidential information that could reasonably affect his representation of the other client's foreclosure. Welder admitted he was in possession of the former client's draft financial statements for 2010 and 2011 and had intimate knowledge of the company's financial affairs.

The panel found that Welder committed professional misconduct when he acted in a conflict of interest by representing a client in a foreclosure proceeding against former clients, contrary to the rules.

Professional conduct record and ungovernability

The Law Society's primary position was that Welder should be found ungovernable, not solely on the basis of the professional misconduct in this matter, but on the totality of his professional conduct record. If Welder was found ungovernable, the Law Society submitted that he must be disbarred.

The panel found the length and the content of Welder's record were serious aggravating factors. His record disclosed six conduct reviews, six citations and a practice standards referral. Previous disciplinary sanctions include a reprimand, conditions, fines, costs and four separate suspensions of 60 days, three months, 45 days and, most recently, three months.

Each of the six citations involved allegations of professional misconduct in a series of different circumstances. Welder admitted professional misconduct in respect of four of the six citations and entered into agreed statements of fact in respect of three.

The panel found a few mitigating factors that could indicate that Welder is not consistently unwilling to be governed by the Law Society:

- although Welder was not exonerated on each conduct review, no further action was taken in any of the six conduct reviews and the one practice standards review;
- Welder acknowledged and admitted improper conduct in respect of several of the matters set out in the record;
- Welder cooperated with the Law Society in numerous of the matters set out in the record; and
- there was an indication of "underlying psychological issues impinging on Welder's ability to practise in a reasonable and professional manner" and, more significantly, he voluntarily attended at counselling to address those issues.